



## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

The Division of Alcoholic Beverages and Tobacco (Division) in the Department of Business and Professional Regulation (DBPR) is responsible for regulating the conduct, management, and operation of the manufacturing, packaging, distribution, and sale within the state of alcoholic beverages. Florida's alcoholic beverage law provides for a structured three-tiered distribution system: manufacturer, wholesaler, and retailer (vendor). The retailer makes the ultimate sale to the consumer. Alcoholic beverage excise taxes are collected at the wholesale level based on inventory depletions and the state sales tax is collected at the retail level.

Chapters 561-565 and 567-568, F.S., comprise Florida's beverage law. The provisions of the bill primarily apply to chapter 565, F.S., relating to "Liquor." Section 565.01, F.S., provides a definition for purposes of the beverage law and states:

565.01 Definition; liquor.--The words "liquor," "distilled spirits," "spirituous liquors," "spirituous beverages," or "distilled spirituous liquors" mean that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.

#### Present situation

#### **Proof – alcohol content of distilled spirits**

Currently s. 565.07, F.S., specifies:

565.07 Sale or consumption of certain distilled spirits prohibited.--No distilled spirit greater than 153 proof shall be sold, processed, or consumed in the state.

Section 561.01(4), F.S., defines alcoholic beverages as follows:

(4)(a) "Alcoholic beverages" means distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume.

(b) The percentage of alcohol by volume shall be determined by measuring the volume of the standard ethyl alcohol in the beverage and comparing it with the volume of the remainder of the ingredients as though said remainder ingredients were distilled water.

The concentration of alcohol in a beverage is usually stated as the percentage of alcohol by volume (ABV) or as "proof." Proof is twice the percentage of alcohol by volume at 60 degrees Fahrenheit (e.g., 80 proof = 40% ABV).

### Effect of proposed changes

The bill repeals the distilled beverage proof limitations specified in s. 565.07, F.S.

### Present situation

#### **Container labeling**

Sections 564.045 and 565.095, F.S., closely mirror each other relating to "licensure as [a] primary American source of supply" (PAS) for wine and distilled spirits, respectively. The PAS provisions require the registration of each brand of wine and distilled spirits sold in Florida and the licensure of that brand's PAS. Generally, the PAS is either the manufacturer or the source closest to the manufacturer in the channel of commerce from whom the product can be secured.

It has long been a common practice to require the registration of the brand and label of each alcoholic beverage container introduced into the marketplace. The 1937 Laws of Florida, chapter 18015, s. 8, specified in part:

Section 8. The Director of the Beverage Department by and with the consent of the Governor, is vested with power and authority to make and promulgate reasonable rules and regulations governing the labeling of all malt, vinous and spirituous beverages containing more than 1% of alcohol by weight, which rules and regulations shall comply with the Federal regulations pertaining to such labeling.

Current law relating to distilled spirits specifies:

565.08 Labeling regulations; liquor.--The division is fully authorized to make and promulgate reasonable rules and regulations governing the labeling of all liquors containing 0.5 percent or more of alcohol by volume, which rules and regulations shall not conflict with the federal regulations pertaining to such labeling.

Currently, rule 61 A-4.005, FAC, establishes the guidelines for brand and label registration:

61A-4.005 Brand Registration.

(1) Each brand or label of spirituous beverages sold or offered for sale within the State of Florida or transported within the State of Florida must be registered with the Division and must have a brand registration number assigned to it by the Division. Requests for registration of brands shall be submitted on forms prescribed by the department for that purpose and in the manner prescribed by the Division.

(4) The registration year for all brands or labels shall be from July 1 to June 30 inclusive of each year.

(5) Annual registration of brands shall be affected by additions to or deletions from the master list of the registrant for the previous year and by the payment of twenty (\$20.00) dollars for each brand or label registered.

(6) Subsequent to the annual registration of brands or labels, any registrant desiring to register new brands or labels under which spirituous beverages are to be sold or offered for sale or transported within the State of Florida may register such brand or label on a registration form prescribed by the Division for that purpose and must make payment of twenty (\$20.00) dollar registration fee for each such brand or label. The payment of the \$20.00 registration fee shall be for the balance of the current registration year as set forth in Section (4) above.

Currently, alcoholic beverage and tobacco licenses are renewed annually. In general, the majority of the alcoholic beverage licenses, with the exception of brand registrations, are renewed in September

for the northern part of Florida and in March for the southern part of the state. Brand registrations renewals are due by June 30<sup>th</sup> each year.<sup>1</sup>

Currently, the Administrative Procedure Act (APA), chapter 120, F.S., specifies various procedural guidelines for the operation of state agencies. Section 120.60, F.S., addresses general licensure procedures. Notification of the receipt of an application by an agency is not required under the APC. However, subsection (1) of this section specifies in part:

Upon receipt of an application for a license, an agency shall examine the application and, within 30 days after such receipt, notify the applicant of any apparent errors or omissions and request any additional information the agency is permitted by law to require.

Subsection (1) also specifies that:

Every application for a license shall be approved or denied within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law.

### Effect of proposed changes

The bill codifies, with changes, and clarifies the registration requirements specified in rule 61 A-4.005, FAC. The bill adds the guideline that a registration must be renewed if the style of the brand or label is changed or if the registration is removed from the product list and is no longer marketed in this state. The bill further specifies that a registration application does not have to be filed and processed by the DBPR if no changes have been made to the brand or label during the year, however, the bill continues to require payment of the fee equal to the equivalent of the annualized fee.

The bill requires that a licensed distiller located in Florida that is filing a brand or label registration or renewing a registration shall have preference by the DBPR in processing the registration or fee payment over distillers that are not located in Florida.

The bill requires the DBPR to notify each brand registrant within 10 days that the application for registration and payment of the appropriate fee has been received by the DBPR. The bill also requires the DBPR to notify the applicant for registration of the approval or denial of a brand or label registration within 30 business days of receipt of the application and fee.

The bill provides for the issuance of an up to 5-year registration to registrants. This provision allows the registrant a choice as to how many years they would like to register the brand, up to a maximum of five years. The bill does not change the registration fee but does specify that the renewal fee may not exceed the statutory caps on an annualized basis.

### Present situation

#### **Beverage tastings**

Activities and interaction between alcoholic beverage licensees are extensively regulated and constitute the basis for Florida's "tied house evil" law. Among those restrictions, s. 561.42, F.S. prohibits a manufacturer or distributor from having any financial interest, directly or indirectly, in the establishment or business of any retailer. Notwithstanding the overall premise, the Beverage Law also contains exceptions to the structured three-tiered distribution system.

The DBPR web page notes -

"Section 561.42, F.S., provides certain limitations and prohibitions related to the manufacture, distribution, and retail sales of alcoholic beverages. Among other provisions, the statute provides for the following:

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<sup>1</sup> DBPR spread sheet, 2010 Agency Legislative Proposals, Office of Budget & Financial Management, dated 11/14/2009, page 1, available in committee files.

- Prohibits, with certain exceptions, gifts, loans of money or property, or rebates between manufacturers or distributors and vendors;
- Limits the extension of credit and provides consequences for nonpayment of sales by a vendor;
- Provides certain restrictions related to manufacturers or distributors giving, lending, renting, selling, or otherwise furnishing advertising materials to a vendor; and
- Prohibits certain sampling activities.”<sup>2</sup>

Beer, wine and spirits tastings (consumer sampling of the alcoholic beverage product) are permitted by the Beverage Law. Section 565.17, F.S., allows distilled spirits distributors and distilled spirits vendors (but not manufacturers) to conduct distilled spirits tastings where beverages are sold by the package (carry-out) or for on-premises consumption.

565.17 Beverage tastings by distributors and vendors.--A licensed distributor of spirituous beverages, or any vendor, is authorized to conduct spirituous beverage tastings upon any licensed premises authorized to sell spirituous beverages by package or for consumption on premises without being in violation of s. 561.42, F.S., [tied house evil restrictions] provided that the conduct of the spirituous beverage tasting shall be limited to and directed toward the general public of the age of legal consumption.

Currently, there are no statutes that regulate the size or number of the samples provided at beverage tastings. However, the Division does have rules to guide the samples of spirituous beverages as they pertain to “gifts,” as a part of the “tied house evil” restrictions. Under rule 61A-1.010, F.A.C. spirituous beverage samples cannot exceed 3 liters to each licensed premises and samples cannot be provided as gifts to a vendor who has purchased the brand within the last 12 months unless the ownership of the manufacturer or distributor has been transferred to a new entity or the vendor’s license has been transferred to a new owner.

#### Effect of proposed changes

The bill allows distillers to conduct spirituous beverage tastings under the same parameters as distributors and vendors.

The bill authorizes any licensed distiller located in this state to deliver to any vendor licensed to sell spirituous beverages by package or consumption on premises, free samples of up to 12 containers of no more than 1.75 liters per container of distilled spirits per year for promotional purposes without being in violation of the “tied house evil” financial assistance limitations.

#### Present situation

##### **Sales tax – chapter 212, F.S.**

Currently, a sales tax exemption exists as authorized in s. 212.08(7)(s), F.S., and specifies:

- (s) Tasting beverages.--Vinous and alcoholic beverages provided by distributors or vendors for the purpose of "wine tasting" and "spirituous beverage tasting" as contemplated under the provisions of ss. 564.06 and 565.12, respectively, are exempt from the tax imposed by this chapter.

The footnote to this paragraph cites at footnote number 9:

“9. Note.--See ss. 564.08 and 565.17 for specific references to beverage tastings.”

#### Effect of proposed changes

<sup>2</sup> See question 15 at <http://www.myfloridalicense.com/dbpr/abt/documents/abt>, January 4, 2010.

The bill corrects the cross-references in this sales tax section and clarifies the application of the current sales tax exemption to beverage tastings as authorized in s. 564.08, F.S., relating to wine and s. 565.17, F.S., relating to liquor.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 212.08(7)(s), F.S., to correct the cross-references in this section to clarify the current application of the sales tax exemption to beverage tastings of wine and distilled spirits.

Section 2. Repeals s. 565.07, F.S., relating to distilled beverage alcohol content [proof] limitations.

Section 3. Amends s. 565.08, F.S., to statutorily codify guidelines for the registration of brands or labels of distilled spirits beverages.

Section 4. Amends s. 565.17, F.S., to allow distillers to conduct spirituous beverage tastings under the same parameters as distributors and vendors.

Section 5. Effective date – July 1, 2010.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

**1. Revenues:**

Fiscal impact estimates were provided by the DBPR, Office of Legislative Affairs, 2010 Legislative Analysis Form, dated November 23, 2009.

The DBPR projects that “to change to a 5 year renewal process, the fees would be collected in one year for the full five years of liquor brand renewals, and would not be collected again for five years, thus having no revenues paid for these renewals in years 2, 3, 4, and 5. For example, if collected each year, the division would receive approximately \$130,500 each of the five years. If collected on a 5 year basis, the division would receive approximately \$652,500 in year 1 and then again in year 6.”

The DBPR estimates that the bill “may increase the number of spirituous beverage tastings. The revenue impact, although indeterminate is anticipated to be minimal. For example, if all 7 licensed distillers located in Florida gave the maximum amount of samples to 1% of the licensed spirituous beverage vendors, and the beverages were in the mid tax category, the maximum additional excise taxes would be \$65,242 per year. If half the distillers located in Florida provided half of the maximum amount of samples to 1% of the licensed spirituous beverage vendors, and the beverages were in the mid tax category, the maximum additional excise taxes would be \$13,949. If only one distiller provided the samples the additional excise taxes would be \$4,650.”

**2. Expenditures:**

The DBPR anticipates that “identifying Florida distillers (separate from out-of-state distillers) would require the review of all applications received in the brands queue on a daily basis. This workload equates to one additional FTE as a Regulatory Specialist II. The DBPR estimates that these expenditures would reflect “an increase in workload in the Bureau of Licensing within the division that will cost \$50,521 in operating expenditures in the first year and \$46,644 each year thereafter.”

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

**1. Revenues:**

None anticipated.

2. Expenditures:

None anticipated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

In the aggregate the brand and label registration changes should facilitate the processing of the registrations for the primary source of supply for distilled spirits thus improving timelines for these licensees.

The bill is further designed to facilitate marketing processes for spirits distillers by allowing spirits tastings and free samples for promotional purposes.

D. FISCAL COMMENTS:

The DBPR states "The bill provides for the issuance of an up to 5-year registration to selected registrants. Issuing an "up to 5-year registration" for liquor would most likely not reduce the number of new and revised primary American source of supply licenses and brand registrations, but should reduce the number of renewals processed annually. Since this affects liquor only, and based on FY 08/09 liquor renewals, it would have a minimal impact as only 4,350 of the 38,715 total brand renewals were for liquor. This equates to 11% of all brands renewed. The LicenseEase system will need configuration changes to allow a renewal structure different than malt beverage and vinous brands. Also, using the phrase "up to" could indicate that the registrant would have a choice as to how many years they would like to register the brand, up to a maximum of five years which would also require significant changes to the current system's configuration.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Section 3 of the bill gives preference to in-state distillers to have their brand registrations or renewals processed before out-of-state distillers. Section 4 allows distillers located in the state to conduct spirituous beverage tastings, but does not mention or allow the out-of-state distillers to do the same. It may be argued that these sections of the bill could be construed as giving unfair/discriminatory treatment to in-state distillers.

In a case before the U. S. Supreme Court, *Granholm v. Heald*,<sup>3</sup> the Court attempted to balance two parts of the U. S. Constitution: the Commerce Clause which requires unrestricted, non-discriminatory trade between the states and the 21st Amendment which gives regulatory power to the states over all alcoholic beverage sales within that state's borders.

The question before the Supreme Court was: *Does a state regulatory scheme that permits in-state wineries directly to ship alcohol to consumers but restricts the ability of out-of-state wineries to do so violate the Commerce Clause in light of Section 2 of the Twenty-first Amendment?*

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<sup>3</sup> *Granholm v. Heald*, 125 S.Ct. 1885 (May 16, 2005)

Section 2 of the 21<sup>st</sup> Amendment to the U. S. Constitution reads: *The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.*

The U. S. Supreme Court struck down Michigan and New York laws that were a part of the *Granholm* case. The Court held that the laws in both states discriminated against interstate commerce in violation of the Commerce Clause, Art. I, s. 8, cl. 3, and that the discrimination was neither authorized nor permitted by the 21st Amendment.

The traditional three tier system of alcohol beverage distribution utilized by Florida and many other states was held to be legitimate as long as state laws satisfy the key holdings of *Granholm*.

B. RULE-MAKING AUTHORITY:

NA

C. DRAFTING ISSUES OR OTHER COMMENTS:

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**